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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,793	11/13/2001	Gerard Laurent Buisson	8320M	5852

27752 7590 06/26/2003

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 06/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/010,793

Applicant(s)

BUISSON ET AL.

Examiner

Robin A. Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the plastic material of the over-cap in the cross-sectional views as described in the specification. The drawings depict metal material. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Specification*

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical, or inventive, feature of the claimed instant invention.

The following title is suggested: Substantially triangular-shaped over-cap having inner skirt projections extending partially around the perimeter.

### *Claim Rejections - 35 USC § 112*

3. Claims 1-15 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

Claim 1 recites the limitation "the total length of all of the inner extensions" in line 6. There is insufficient antecedent basis for this limitation in the claim. Only one corner and one inner extension has been set forth in lines 5-7 of the claim.

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

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***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-6,9, and 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michaud et al. (US 4,742,934).

Michaud teaches the claimed over-cap except for is silent regarding the length of the at least one inner extension extends about the perimeter of the over-cap (only that the extensions are at the comers of the perimeter) or an intersection of points bounding the at least one extension.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the over-cap of a triangular shape since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art as taught by Michaud at column 3, lines 57-59.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the inner extensions less than about 70% of the perimeter of the over-cap, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. Similarly, it have been obvious to one having ordinary skill in the art at the time the invention was made to provide the inner extensions lat a distance bounded by intersecting points 20% along two intersecting imaginary lines of the over-cap

6. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michaud in view of Terauds (US 4,535,889).

Michaud teaches the claimed over-cap except for

Terauds teaches it is known to provide a plurality of inner extensions on a skirt wall.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute a plurality of inner extensions for the single inner extension of Michaud. Doing so provides more flexure to the closure skirt in for opening and closing the over-cap over a container end.

7. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michaud in view of Blanchard (US 4,026,459).

Michaud teaches the claimed over-cap except for the flange comprising an upper, outwardly extending portion and a lower, downwardly extending portion.

Blanchard teaches it is known to provide a cap flange having an upper, outwardly extending portion and a lower, downwardly extending portion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the over-cap of Michaud with both an upper, outwardly extending portion and a lower, downwardly extending portion. Doing so provides additional support for the container skirt outer peripheral portion.

#### ***Response to Arguments***

8. Applicant's arguments filed April 7, 2003 have been fully considered but they are not persuasive.

Regarding the drawings, although the specification does state plastic is a preferred material, it does not express using metal as currently depicted in the drawings. Although it is agreed that plastic is conventionally used in the art, it is not conventional to use metal for overcaps. Regardless of the conventional use of materials, the overcap of the present application depicts metal in cross-section, not plastic as clearly disclosed in the specification.

The drawing objection stands as set forth and is made final.

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Regarding applicant's remarks of the patent to Michaud at page 3 and 4 of the amendment filed April 7, 2003, the examiner disagrees with the assertion of the structure of Michaud. Applicant's assertion of the structure at column 4, lines 62-66 is only partially correct. At column 5, lines 1-6, it is further stated that "the depending outer wall 48 of the lid's sealing segment 38 will be provided with an inwardly directed reentry portion that forms a unique snap locking ledge at any given corner of the lid 12". This clearly indicates the wall 48 extends continuously about the perimeter of the lid panel.

Thus, Michaud does not teach away from the claimed invention of the instant application as asserted by applicant.

Applicant's arguments regarding the combination of Michaud and Terauds and Michaud and Blanchard are also unpersuasive for the same reasons given above and in light of applicant's assertion in the arguments of the combinations that the base reference does not render the claims as set forth obvious.

### ***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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10. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

11. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. \_\_\_\_\_ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

\_\_\_\_\_

Signature\_\_\_\_\_

Date\_\_\_\_\_

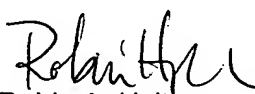
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH  
June 24, 2003

  
Robin A. Hylton  
Primary Patent Examiner  
GAU 3727